purpose of the grant to Congress, and to include it within the grant would bring within the realm of federal control a large sphere of mercantile activity which is primarily and naturally domestic. *Hooper* v. *California* (1894) 155 U. S. 648, 655. Accordingly it is held that business enterprises, *Hopkins* v. *United States* (1898) 171 U. S. 578, taxes, *Ficklen* v. *Shelby Co.* (1891) 145 U. S. 1, regulation of tort liabilities, *Sherlock* v. *Alling* (1876) 93 U. S. 99, 104, and agreements, *Williams* v. *Fears* (1900) 179 U. S. 270, 278; *United States* v. *Knight* (1894) 156 U. S. 1, 16; *Anderson* v. *United States* (1898) 171 U. S. 604, which are only remotely and incidentally connected with interstate commerce do not thereby become subject to federal control. Thus it would seem that the general rule to be deduced from the cases is that whenever legislation enacted in pursuance of the power granted to Congress to regulate interstate commerce is primarily directed towards the accomplishment of the end and purpose of that power, namely, to secure uniformity of regulation and avoid discriminating state legislation, such federal legislation should be upheld; and not otherwise. Adopting this rule, it would seem that since the Employers' Liability Act under discussion is directed, not primarily towards the regulation of commerce among the States, but towards the regulation of the liability between employer and employé engaged in interstate commerce, its constitutionality is extremely doubtful. The regulation of the liabilities of a carrier is not a regulation of interstate commerce simply because the carrier is engaged in interstate commerce. *Sherlock* v. *Alling*, supra. As is pointed out in the principal case of *Howard* v. *The Ill. Cent. RR. Co.*, supra, there is a clear distinction between declaring the liability for an infraction of rules for the regulation of commerce as is done in the Safety Appliance Act, March 2, 1893, c. 196, 27 U. S. Stat. 531, and the regulation of that liability itself. Hence, it would seem that if Congress is to have the power to enact an Employers' Liability Act, without a constitutional amendment, it must be done merely as an incidental definition of the liability of carriers to their employés for the infraction of authorized regulations of interstate commerce. Certainly, it is difficult to see how the act in its present form can be upheld without overturning former principles laid down by the courts and opening the way to unlimited control by Congress of all subjects remotely or incidentally connected with interstate commerce.

The second ground of the decisions in the principal cases, involving merely a question of interpretation, is clearly correct. The act reading "That *every* common carrier engaged in trade or commerce * * * shall be liable to *any* of its employés" manifestly includes employés whose services may be wholly confined to intrastate commerce, and the courts are not inclined to remedy such defects in accordance with the presumed intention of Congress by judicial interpretation. See *Ill. Cent. RR. Co.* v. *McKendree* (1906) — U. S. —. It seems clear that whatever attitude the Supreme Court may take in regard to the general right of regulating the liability of employers, the Circuit Court decisions must be sustained upon the second ground.

THEORIES OF ADMISSIONS IN EVIDENCE.—Judicial opinion has come to a fairly definite understanding as to when previous extra-judicial

declarations of parties to an action shall be admitted as "admissions." It seems to be established that, though they must not be as to a pure matter of law, there is no requirement that they be as to a specific fact. They may be merely statements of the general merits of the case, *Moriarty* v. *London etc. Ry.* (1870) L. R. 5 Q. B. 314, and authority even favors the view that they may be as to a matter involving both questions of law and fact. *Lewis* v. *Harris* (1858) 31 Ala. 689, 700; 1 Greenleaf, Evid. § 97, and cases cited; but see *Colt* v. *Selden* (Pa. 1836) 5 Watts 525; *Boston etc. Mfg. Co.* v. *Messinger* (Mass. 1824) 2 Pick. 233, 240. It is not required that they be against the party's interest at the time of making, *State* v. *Anderson* (1882) 10 Ore. 448, 453; *Frazer* v. *State* (1875) 55 Ga. 325, nor founded on his personal knowledge. *Shaddock* v. *Town of Clifton* (1867) 22 Wis. 110, 115; *Reed* v. *McCord* (1899) 160 N. Y. 330, 341; *Bulley* v. *Bulley* (1874) L. R. 9 Ch. App. 739, 747, 751; but see *Folk* v. *Schaeffer* (1897) 180 Pa. 613, 618.

Though the fact of admissibility is established generally, much confusion is prevalent as to the true reason for it, cf. *Darby* v. *Ouseley* (1856) 1 H. &. N. 1, 6; *Frazer* v. *State*, supra 328; *Cook* v. *Barr* (1870) 44 N. Y. 156, and as to the evidentiary effect which the admission should have. *State* v. *Willis* (1898) 71 Conn. 293, 306; *Hall* v. *The Emily Banning* (1867) 33 Cal. 522. The explanation sometimes offered, that they constitute an exception to the hearsay rule is indefensible on principle, because inconsistent with the inclusion in this category, as sanctioned by authority, of certain of the above classes. Where the admission is not based upon the personal knowledge of the party, or where it is as to the general merits of his case, the burden of the statement is not testimonial, that is it is not such a statement as the party could make as a witness. See *Darby* v. *Ouseley*, supra. In view of this the evidence of the admission does not come within the accepted definition of hearsay. 2 Wigmore, Evid. § 1424. On the other hand when the admission is of a particular fact but is not against the party's interest at the time of making, though it may logically be considered as hearsay, it cannot possibly be of a higher probative value than ordinary hearsay, and its admissions cannot therefore be regarded as a logical exception to the hearsay rule. See *Reed* v. *McCord* (N. Y. 1897) 18 App. Div. 381, 385; *Glenn* v. *Lehnen* (1873) 54 Mo. 45, 51.

The lack of limitation upon the character of the statements which are admitted and their intrinsic nature makes it more likely that their admissibility is really based on another theory sometimes advanced, *State* v. *Willis*, supra; Wigmore, Evid. § 1048 (3), that the statements, being contrary to the party's allegations in the action, are relevant in convincing the jury of the untruth of those allegations—in other words they operate generally to discredit his case. It has been sought to demonstrate the effect which admissions should have upon the pleadings by an analogy to the effect of previous contradictory statements of a witness upon his testimony on the stand. 2 Wigmore, Evid. § 1048 (3). But the analogy is of little service. The testimony of a witness, which has always a certain amount of affirmative force, is merely neutralized by proof of the contradictory statements. Wigmore, Evid. § 1018. Since the pleadings merely define the issue and have no affirmative force, the

"neutralizing" admissions would have no effect, and their admission would be useless. The distinction in other words is that while the personal veracity of a witness is of the utmost importance, that of a party is not, as instanced by the fact that a witness may be impeached by evidence of his general character, while the character of a party to a civil action is unimpeachable. In fact this theory, though the only one which furnishes any adequate explanation for the unlimited character of admission, rests by no means upon a firm basis. The previous opinion of a party as to matters connected with his case, seems, in reality, of no greater relevancy or force than that of a third party.

The importance of the true reason for allowing admissions in evidence lies in the different use which is to be made of such evidence as different reasons are assigned. If admitted as a hearsay exception the admission has of course the force of ordinary affirmative evidence and therefore may shift the burden of proof. If, on the other hand, it is regarded merely as discrediting the party's case, it has only negative force. It cannot shift the burden of proof, and therefore cannot of itself be considered as establishing the truth of any fact which the party has the burden of proving. A recent New York case is interesting as showing one view of this effect. *Rosenblum* v. *Liener* (1906) 98 N. Y. Supp. 836. In an action for the recovery of a deposit made in the sale of certain property the plaintiff based his case on alleged false representations by the vendor as to the amount for which the property had previously rented. The defendant had previously contended that he had represented that the property *might* be made to rent for the price, thereby incidentally admitting that the property did not so rent at that time. It was held that this admission was sufficient to establish the fact that the representation, if made as alleged by the plaintiff, was false, the admission thus being considered as affirmative evidence. The case illustrates one of the chief inconsistencies of the view it represents. The statement was not against the defendant's interest at the time of making, *Freeman* v. *Brewster* (1894) 93 Ga. 648, and therefore had no higher probative force than ordinary hearsay. It is not therefore a reasonable exception to the hearsay rule, under which it must be brought if it is to be given any affirmative force. The same result was reached, however, in *Frazer* v. *State*, supra.

DEVELOPMENT OF THE PROTECTION OF TRADE NAMES.—If the case referred to in *Southern* v. *How* (1590) Poph. 143, is properly considered as one of the protection of a trade mark, it seems apparent that trade-mark law and unfair competition had a common origin. In fact the earlier cases made no distinction between them, the cause of action in either case being based on fraud. The right of property in a trade mark was not clearly recognized for many years, *Perry* v. *Truefitt* (1842) 6 Beav. 66, and as late as 1742 Lord Hardwicke expressed a doubt as to the propriety of injunction in support of it. *Blanchard* v. *Hill*, 2 Atk. 485. But in *Millington* v. *Fox* (1838) 3 My. & Cr. 338, a case not involving fraud, the trade mark was clearly recognized as a property right, though qualified in so far that equity will not give damages for a past infringement, if innocent. *Edelsten* v. *Edelsten* (1863) 1 De G. J. & S. 185. The fact that infringement of trade mark is a violation of a prop-